

EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

SENATE

S. No. 2099



Introduced by Senator PIA S. CAYETANO

AN ACT
REGULATING THE MANUFACTURE, IMPORTATION, SALE, DISTRIBUTION,
USE, ADVERTISEMENT, PROMOTION, AND SPONSORSHIP OF ELECTRONIC
NICOTINE DELIVERY SYSTEMS AND ELECTRONIC NON-NICOTINE DELIVERY
SYSTEMS (ENDS/ENNDS), HEATED TOBACCO PRODUCTS (HTPs), AND
OTHER IMITATION TOBACCO PRODUCTS

EXPLANATORY NOTE

Over the years, there has been widespread use of Electronic Nicotine Delivery Systems and Electronic Non-Nicotine Delivery Systems (ENDS/ENNDS), Heated Tobacco Products (HTPs), and other imitation products.¹ These said devices have been marketed as less harmful than regular cigarettes despite the absence of conclusive evidence that ENDS/ENNDS and HTPs are safe products. The reduced health risk claims of the industry are still yet to be supported by science-based evidence. But there is, however, evidence to show that the majority of ENDS/ENNDS and HTPs contain harmful chemicals.²

Meanwhile, there is an uptake in the consumption of ENDS/ENNDS and HTPs among the youth, in our country and around the world. In the Philippines, one (1) out of five (5) e-cigarette users is aged ten (10) to nineteen (19) years old.³ Around eleven

¹ Blaha, M. (n.d.). 5 vaping facts you need to know. Retrieved March 10, 2021, from <https://www.hopkinsmedicine.org/health/wellness-and-prevention/5-truths-you-need-to-know-about-vaping>

² E-cigarettes are harmful to health. (n.d.). Retrieved March 10, 2021, from <https://www.who.int/news/item/05-02-2020-e-cigarettes-are-harmful-to-health>

³ Marquez, C. (2019, November 28). Regulate use of vape to protect youth – plcpd. Retrieved March 10, 2021, from <https://newsinfo.inquirer.net/1195340/regulate-use-of-vape-to-protect-youth-plcpd>

percent (11%) of young people aged eleven (11) to thirteen (13) have already tried e-cigarettes and there are around 550,000 adult users of e-cigarettes.⁴ In several countries, the use of ENDS/ENNDS and HTPs has been declared as an epidemic and this in turn has caused an outbreak of unknown lung injuries.

The epidemic of ENDS/ENNDS and HTPs' use in youth and children calls to mind Article II, Section 15 of our Constitution which expressly provides that the State shall protect the right to health of the people and instill health consciousness among them. Thus, it is unequivocally our mandate to protect our people, most especially our youth, from the unknown long-term health impacts of the use of ENDS/ENNDS and HTPs to the user and to the society.

During a time when the world is suffering from a health pandemic brought about by COVID-19, taking care of one's health is of utmost importance in order to fight such a deadly virus. We have seen evidence that the use of ENDS/ENNDS HTPs put its users at more risk from severe complications of COVID-19.

According to the Philippine Pediatric Society (PPS) - Tobacco Control Advocacy Group, there is a startling connection between cigarette and/or vape smoking and COVID-19, which can result in critical hospitalization and even death.⁵ The Department of Health (DOH) also joined PPS in pushing for tobacco cessation and reminding the public of the risks of cigarette and vape smoking in connection to COVID-19.⁶

This bill thus proposes the regulation on the manufacture, distribution, importation, and sale of novel and emerging tobacco and imitation tobacco products such as ENDS/ENNDS and HTPs. Manufacturers, distributors, importers, and sellers of ENDS/ENNDS and HTPs are required to register with the Food and Drug Administration (FDA) prior to market placement to ensure that the products available in the market have already been reviewed for public safety.

⁴ Reports of SEIZURES after e-cigarette use – US FDA. (n.d.). Retrieved March 10, 2021, from <https://www.healthjustice.ph/?p=2470>

⁵ Mocon-Ciriaco, C. (2020, November 11). DOH, PPS push for Tobacco cessation, cite COVID-19 RISKS: Claudeth Mocon-Ciriaco. Retrieved March 10, 2021, from https://businessmirror.com.ph/2020/11/11/doh-pps-push-for-tobacco-cessation-cite-covid-19-risks/?fbclid=IwAR1aaUR7hYSu_mrqlvaKOM93yDfosMh_WJTuv-dk0ZhGAW3xfDsASQ-7vc

⁶ *Ibid.*

The advertisement, promotion, and sponsorship of ENDS/ENNDS, HTPs, and other imitation tobacco products shall likewise be subjected to stringent regulations considering that these products pose important health risks.

By regulating these products, the State is fulfilling its mandate to protect the health of our people, most especially the youth, at a time when we are experiencing and still being threatened by the ill effects of COVID-19.

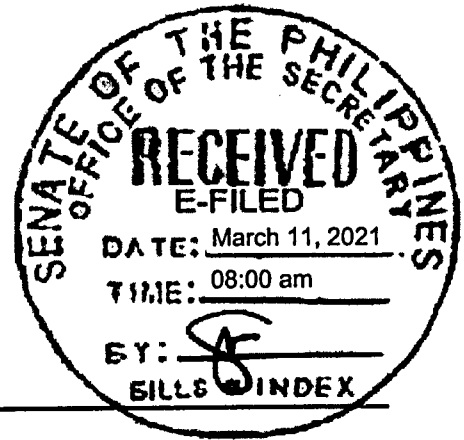
In view of the foregoing, the immediate passage of the bill and approval of the same is earnestly sought.

Pia S. Cayetano
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OTHER IMITATION TOBACCO PRODUCTS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 **Section 1. Short Title.** – This Act shall be known as the “Vapes and HTPs
2 *Regulation Act.*”

3 **Sec. 2. Declaration of Policy.** – It is hereby declared the policy of the State to
4 promote and protect the right to health of the people and instill health consciousness
5 among them. Towards this end, the State shall implement measures to promote the
6 general welfare by protecting the public against hazards to health and safety of
7 Electronic Nicotine Delivery Systems and Electronic Non-Nicotine Delivery Systems
8 (ENDS/ENNDS), Heated Tobacco Products (HTPs), and other imitation tobacco
9 products.

10 **Sec. 3. Definition of Terms.** – As used in this Act, the following terms shall
11 mean:

12 (a) **Advertisement** refers to any visual and/or audible message or post
13 generated, sent, received, or disseminated to the public about or on a
14 particular product that promote or give publicity by words, designs,
15 images or any other means through broadcasts, electronic, optical, print
16 or whatever form of mass or social media, including indoor and outdoor
17 advertisements, such as but not limited to signs and billboards.

18 (b) **Advertising** refers to the business of conceptualizing, presenting,
19 making available, and communicating to the public, through any forms

1 of mass or social media, including documentaries and testimonials, any
2 fact, data, or information about the attributes, features, quality, or
3 availability of consumer products, services, or credit.
4 For the purpose of this Act, advertising shall be understood as Electronic
5 Nicotine Delivery Systems and Electronic Non-Nicotine Delivery
6 Systems (ENDS/ENNDS), Heated Tobacco Products (HTPs) and other
7 imitation tobacco products advertising. This shall specifically refer to any
8 posts, messages, or images depicting smoking or vaping as a lifestyle,
9 or promoting or encouraging smoking or vaping, or the purchase or use
10 of ENDS/ENNDS, HTPs, and other imitation tobacco products
11 trademarks, brand names, design, and manufacturer's names.

12 (c) **Distributor** refers to any person, entity, or establishment that imports
13 ENDS/ENNDS, HTPs, and other imitation tobacco products for
14 distribution to other establishments or outlets.

15 (d) **Designated Vaping Area (DVA)** refers to an area of a building or
16 conveyance where vaping may be allowed, which may be in an open
17 space or separate area with proper ventilation subject to the specific
18 standards provided in this Act.

19 (e) **Electronic Nicotine Delivery Systems and Electronic Non-Nicotine**
20 **Delivery Systems (ENDS/ENNDS)**, otherwise known as Vapes, refer to
21 combinations of non-tobacco e-liquids, solutions or refills, and an
22 electronic delivery device, or any combination thereof, that produce an
23 aerosol, mist, or vapor that users inhale by mimicking the act of smoking.

24 (f) **Heated Tobacco Products (HTPs)** refer to a form of tobacco product
25 that uses an electronic device to heat processed tobacco leaves, and
26 produces aerosols for inhalation by mimicking the behavior of smoking
27 conventional cigarettes.

28 (g) **Imitation Tobacco Products** refer to any product, device, or article –

29 (1) That resembles, or is designated to resemble or replace a
30 tobacco product; or

31 (2) That is capable of being smoked or inhaled; or

32 (3) That creates the resemblance of smoking; or

33 (4) That may be used in such a way as to mimic the act of smoking;

34 or

1 (5) That which is sold in a package designed to resemble the
2 packaging commonly associated with tobacco products.

3 *Provided*, That this provision shall not apply to pharmaceutical products
4 approved by the Food and Drug Administration (FDA) as a smoking cessation
5 tool or device.

6 (h) **Nicotine Shot/Concentrates** refer to high strength preparations of
7 nicotine designed to be added to e-liquid preparations to increase its
8 nicotine content.

9 (i) **Promotion** refers to a social media post or an event or activity organized
10 by, on behalf of, or together with a tobacco or imitation tobacco product
11 manufacturer, distributor, importer or retailer with the aim of promoting a
12 brand of ENDS/ENNDS, HTPs or other imitation tobacco products. It
13 may also refer to the display of the product or manufacturer's name,
14 trademark, logo, etc. This includes the paid use of ENDS/ENNDS, HTPs
15 or imitation tobacco products bearing the brand names, trademarks,
16 logos, etc. in social media, movies, television, and other forms of
17 entertainment.

18 (j) **Retailer** refers to any person, entity, or establishment that sells
19 ENDS/ENNDS, HTPs, and other imitation tobacco products to
20 individuals for personal consumption.

21 (k) **Smoke/Vape-free** refers to air that is 100% free from smoke, vapor or
22 aerosol from tobacco products, ENDS/ENNDS, HTPs, and other
23 imitation tobacco products.

24 (l) **Sponsorship** refers to any public or private contribution from a third
25 party in relation to an event, team, or activity, or social media post which
26 promotes a brand of ENDS/ENNDS, HTPs or other imitation tobacco
27 products.

28 (m) **Vaping** refers to the act of inhaling and exhaling the aerosol and other
29 emissions produced by ENDS/ENNDS or other imitation tobacco
30 products.

31 (n) **Young Person** refers to any person below twenty-one (21) years old.

1 **Sec. 4. Prohibition on the Use of ENDS/ENNDS, HTPs, and other imitation**
2 **tobacco products in Public Places.** – Vaping, or the use of ENDS/ENNDS, HTPs,
3 or other imitation tobacco products shall be prohibited in all places where tobacco
4 smoking or the use of cigarettes is prohibited by other pertinent laws and issuances.
5 Nothing shall prevent Local Government Units (LGUs) or other government agencies
6 from issuing ordinances or circulars providing for stricter standards or an outright ban.

7 **Sec. 5. Prohibited Areas for Use of ENDS/ENNDS, HTPs, and other**
8 **imitation tobacco products.** - There shall be no designated area for the use of
9 ENDS/ENNDS, HTPs, and other imitation tobacco products in the following public
10 places:

- 11 (1) Centers of youth activity such as playschools, preparatory schools, elementary
12 schools, high schools, colleges and universities, boarding houses, dormitories,
13 youth hostels, and recreational facilities for young and elderly persons;
- 14 (2) Within the buildings and premises of public and private hospitals, medical,
15 dental and optical clinics, health centers, nursing homes, dispensaries and
16 laboratories;
- 17 (3) Elevators and stairwells;
- 18 (4) Locations in which fire hazards are present, including gas stations and storage
19 areas for flammable liquids, gas, explosives or combustible material;
- 20 (5) Food preparation and serving areas; and
- 21 (6) Places of worship.

22 **Sec. 6. Standards for Designated Vaping Areas** – All DVAs shall strictly
23 comply with the following standards:

- 24 (1) The DVA shall be in an open space in an outdoor area, or in a separate indoor
25 area with proper ventilation;
- 26 (2) If the DVA is located indoors, there shall be no opening that will allow air to
27 escape from the DVA to the smoke/vape-free area of the building or
28 conveyance, except for a single door equipped with an automatic door closer
29 *Provided, That the buffer zone shall have no other opening except for a single*
30 door equipped with an automatic door closer, which shall be at least two (2)
31 meters away from the door of the DVA, and that vaping is prohibited in the
32 buffer zone;

- 1 (3) The DVA and its ventilation outlets shall not be located in or within ten (10)
2 meters from entrances, exits or any place where people pass or congregate, or
3 in front of air intake ducts;
- 4 (4) The combined area of the DVA and the buffer zone shall not be larger than
5 fifteen percent (15%) of the total floor area of the building or conveyance;
6 *Provided*, That in no case shall such area be less than ten (10) square meter;
- 7 (5) No building or conveyance shall have more than one (1) DVA;
- 8 (6) The ventilation system for the DVA, other than in open space and for the buffer
9 zone, shall be independent of all ventilation systems for the rest of the building
10 or conveyance;
- 11 (7) Young persons and pregnant women and such other vulnerable persons
12 identified by the Department of Health (DOH) shall not be allowed inside the
13 DVA and the buffer zone;
- 14 (8) There shall be no selling, serving, or giving of food and beverages in the DVA
15 and its buffer zone;
- 16 (9) The DVA shall have no tables and chairs; and
- 17 (10) The DVA shall have the following signages highly legible, visible and
18 prominently displayed:
- 19 (a) "Vaping Area" signage;
- 20 (b) Graphic health warnings (GHW) on the effects of vaping;
- 21 (c) Prohibition on the entry of young persons and pregnant women and
22 such other vulnerable persons identified by DOH; and
- 23 (d) Signage stating "food and drinks are prohibited in this area".

24 *Provided*, That nothing in this Act shall compel persons-in-charge to establish
25 designated vaping areas nor prevent them from instituting more stringent measures in
26 their buildings and establishments to better ensure a vape-free environment in their
27 premises.

28 ***Sec. 7. Prohibition on Sales to and by Young Persons and Use by Young***
29 ***Persons*** – The following acts shall be prohibited:

- 30 (a) For any retailer to sell or distribute ENDS/ENNDS, HTPs, and other imitation
31 tobacco products to any young person;
- 32 (b) For any person to purchase ENDS/ENNDS, HTPs, and other imitation
33 tobacco products from a young person; and

1 (c) For a young person to purchase or use ENDS/ENNDS, HTPs, and other
2 imitation tobacco products.

3 For purposes of this Act, it shall not be a defense for the person selling or
4 distributing that he or she did not know or was not aware of the real age of the young
5 person to whom it was sold. Neither shall it be a defense that he or she did not know
6 nor had any reason to believe that the ENDS/ENNDS, HTPs, or other imitation tobacco
7 products was for the consumption of a young person to whom it was sold.

8 **Sec. 8. Restrictions on Flavors.** – The manufacture, sale, distribution, and
9 use of ENDS/ENNDS, HTPs, and other imitation products with flavors other than plain
10 tobacco or plain menthol is prohibited. No combination of other flavors shall be
11 allowed.

12 **Sec. 9. Prohibition on the Retail or Use of Nicotine Shots.** – The retail or
13 use of nicotine shots and/or concentrates shall be strictly prohibited.

14 **Sec. 10. Prohibition on Online Selling of ENDS/ENNDS, HTPs, and Other**
15 **Imitation Tobacco Products and Accessories.** - The sale of ENDS/ENNDS, HTPs,
16 and other imitation tobacco products and accessories via the internet, or through
17 online markets shall be strictly prohibited.

18 **Sec. 11. Point-of-Sale Restriction.** - The distribution, sale, and offering for
19 sale and use of ENDS/ENNDS, HTPs, and other imitation tobacco products and
20 accessories shall be strictly prohibited in places where sale and use of conventional
21 cigarettes shall be prohibited.

22 **Sec. 12. Sale of ENDS/ENNDS, HTPs and Other Imitation Tobacco**
23 **Products and Accessories Within School Perimeters and Residential Areas.** –
24 The sale or distribution of ENDS/ENNDS, HTPs, and other imitation tobacco products
25 and accessories is prohibited within a minimum distance of two hundred (200) meters
26 from any point of the perimeter of a school, public playground, or other facility
27 frequented by young persons and residential areas. Nothing in this provision or
28 elsewhere in this Act shall be construed as limiting the powers of LGUs under the
29 general welfare clause.

30 **Sec. 13. License to Operate and Certificate of Product Registration.** – All
31 persons, entities, or establishments engaged in the manufacture, importation,
32 distribution, and sale of ENDS/ENNDS, HTPs, and other imitation tobacco products
33 shall first secure a License to Operate (LTO) from the FDA. ENDS/ENNDS, HTPs, and
34 other imitation tobacco products shall be submitted for product registration with the

1 FDA and shall be issued a Certificate of Product Registration (CPR) before being sold
2 to the general public.

3 **Sec. 14. Health Claims.** – Unless approved by the FDA, any person, entity,
4 organization, or establishment is prohibited from stating or publishing any health
5 claims on ENDS/ENNDS, HTPs, and other imitation tobacco products, such as but not
6 limited to claims of reduced health risk or reduced exposure to carcinogenic
7 ingredients.

8 **Sec. 15. Restrictions on Advertisement, Sponsorship, and Promotion –**
9 Any form of advertising, sponsorship, promotion, and promotional sales which offer
10 price cuts, discounts, coupons, raffle prizes, exchange gifts, and bundling discounts
11 for purchases of ENDS/ENNDS, HTPs, and other imitation tobacco products and
12 accessories, such as but not limited to clips, bags, holders, lanyards, and other similar
13 accessories shall be prohibited.

14 No person shall use the FDA logo, the words “Food and Drug Administration”
15 or “Philippine FDA”, or any imitation of such words, initials, or logo in print and other
16 forms of broadcast, media, including the internet, in connection with any
17 ENDS/ENNDS, HTPs, and other imitation tobacco products and accessories,
18 merchandise, impersonation, solicitation, or commercial activity in a manner that
19 convey such use is approved, endorsed, or authorized by the FDA.

20 Engaging in any form of ENDS/ENNDS, HTPs, and other imitation tobacco
21 products and accessories advertisement and promotion, including advertising in social
22 media, online media, and the internet is likewise prohibited.

23 Promoting, directly or indirectly, ENDS/ENNDS, HTPs, and other imitation
24 tobacco products and accessories in an event, activity, program, or project where
25 ENDS/ENNDS, HTPs, and imitation tobacco products and accessories company is a
26 participant as a facilitator, sponsor, contributor, donor, or benefactor is prohibited.

27 Unless approved by the FDA as a cessation device, promoting or advertising,
28 directly or indirectly, ENDS/ENNDS, HTPs, and other imitation tobacco products, as a
29 healthier alternative to smoking or a smoking cessation tool, is prohibited.

30 ENDS/ENNDS, HTPs, and other imitation tobacco products and accessories
31 importers, manufacturers, sellers, distributors, and retailers are prohibited from directly
32 or indirectly sponsoring any sport, concert, educational, cultural, art, or any event.

33 Individual or team athletes, artists, performers, influencers, and health
34 professionals are likewise prohibited from accepting sponsorships, endorsing, posting,

1 or promoting ENDS/ENNDS, HTPs, and other imitation products and accessories,
2 which includes the mention or tagging through social media, of the names or brands
3 of ENDS/ENNDS, HTPs, and other imitation tobacco products and accessories. All
4 persons receiving remuneration, in whatever form, for promoting or encouraging the
5 use of ENDS/ENNDS, HTPs, and other imitation tobacco products shall also be
6 covered by the ban under this Section.

7 **Sec 16. Smoking/Vaping Restriction Awareness Campaign.** - The DOH, as
8 may be necessary, shall prescribe guidelines for the implementation of
9 smoking/vaping restriction awareness campaigns, which may include but not be
10 limited to information drives, and posting of warning signages in public.

11 **Sec. 17. Warning on Packaging of ENDS/ENNDS, HTPs, and Other**
12 **Imitation Tobacco Products.** – Containers and packages of *ENDS/ENNDS and*
13 *HTPs* shall bear the graphic health warnings as provided under Republic Act No.
14 10643 or the “Graphic Health Warnings Law.” Containers and packages of other
15 imitation tobacco products or its accessories shall contain appropriate health
16 warnings, whose content, format, and specifications are to be designated by the DOH:
17 *Provided*, That the DOH shall regularly review and revise the said health warnings,
18 and issue additional warnings and messages on health risks as they deem
19 appropriate.

20 **Sec. 18. Role of Government Agencies.** – The DOH, in consultation with the
21 FDA, the Department of Trade and Industry (DTI), and concerned agencies, shall
22 promulgate rules, regulations, and standards on packaging, ingredients, graphic
23 health warning, detailed information on the allowable nicotine containing e-liquid, the
24 strength of e-liquids, compliance with applicable electrical and safety standards.

25 The FDA, in collaboration with LGUs, shall check the compliance of
26 manufacturers, importers, distributors, and retailers with this Act through surveillance
27 inspections and investigations and take appropriate action for non-compliance.

28 The DepEd and CHED, in coordination with the DOH, shall conduct an
29 information campaign on nicotine addiction and the ill effects of smoking and vaping.

30 LGUs are encouraged to enact local ordinances in support of the minimum
31 mandatory requirements under this Act and the general welfare of their constituents.
32 Nothing in this Act shall be construed as limiting the powers of LGUs under the general

1 welfare clause: *Provided*, That the minimum requirements under this Act are complied
2 with.

3 **Sec. 19. Penalties.** – The following penalties shall apply:

4 (a) Violations of Sections 4 and 5 of this Act:

5 First offense: a fine of not less than Five Thousand Pesos (PhP
6 5,000.00) but not more than Ten Thousand Pesos (PhP10,000.00) shall
7 be imposed.

8
9 Second Offense: a fine of not less than Ten Thousand Pesos
10 (PhP10,000.00) but not more than Twenty Thousand Pesos
11 (PhP20,000.00) shall be imposed.

12 Third Offense: In addition to a fine of Twenty Thousand Pesos
13 (PhP20,000.00), the business permits and licenses to operate shall be
14 cancelled or revoked.

15

16 (b) Violation of Section 7 of this Act:

17 First offense: a fine not less than Twenty Thousand Pesos (PhP
18 20,000) or an imprisonment of not more than thirty (30) days, upon the
19 discretion of the court. For succeeding offenses, both penalties shall
20 apply in addition to the revocation of business licenses or permits in the
21 case of a business entity or establishment.

22

23 The DOH and the Department of Social Welfare and Development
24 (DSWD) shall implement appropriate intervention programs, including
25 but not limited to, counselling of young person and his/her
26 parent/guardian, when a young person is caught selling, buying, or using
27 ENDS/ENNDS, HTPs, and other imitation tobacco products.

28

29 (c) Violations of Sections 8 to 15 of this Act:

30 First offense: a fine of not more than One Hundred Thousand Pesos
31 (PhP 100,000.00) or imprisonment of not more than one (1) year, or
32 both, at the discretion of the court shall be imposed.

33

1 Second Offense: a fine of not more than Two Hundred Thousand Pesos
2 (PhP 200,000.00) or imprisonment of not more than two (2) years, or
3 both, at the discretion of the court shall be imposed.

4 Third Offense: in addition to a fine of not more than Four Hundred
5 Thousand Pesos (PhP 400,000.00) or imprisonment of not more than
6 three (3) years, or both, at the discretion of the court, and in the case of
7 a business entity, partnership, corporation, association, or any juridical
8 person, the business permits, licenses, in the case of a business entity
9 or establishment, shall be revoked or cancelled.

10
11 (d) Violation of Section 17 of this Act shall be penalized in accordance to
12 Section 14 of Republic Act No. 10643 otherwise known as "the Graphic
13 Health Warnings Law.
14

15 In case any violation of this Act is committed by a business entity, partnership,
16 corporation, association or any juridical person, the partner, president, director or
17 manager who shall consent to or shall knowingly tolerate such violation shall be
18 directly liable and responsible for the act of the employees and shall be criminally liable
19 as a co-principal.

20 If the guilty officer is an alien, he shall be summarily deported after serving his
21 sentence and shall be forever barred from re-entering the Philippines.

22 **Sec. 20. Implementing Rules and Regulations.** – Within sixty (60) days from
23 the approval of this Act, the DOH, in consultation with the FDA, and other concerned
24 agencies and stakeholders, shall promulgate the necessary implementing rules and
25 regulations (IRR) for the effective implementation of this Act. Failure to promulgate the
26 rules and regulations shall not prevent the implementation of this Act upon its
27 effectivity.

28 **Sec. 21. Separability Clause.** – If any provision of this Act is declared
29 unconstitutional or otherwise invalid, the validity of the other provisions shall not be
30 affected thereby.

31 **Sec. 22. Repealing Clause.** – All laws, decrees, orders, rules and regulations
32 or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

33 **Sec. 23. Effectivity.** – This Act shall take effect after fifteen (15) days from its
34 publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,